

OLC 78-1257/3

17 August 1978

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MEMORANDUM FOR: Frederick P. Hitz  
Legislative Counsel

VIA: [REDACTED]  
Chief, Legislation Staff

FROM: [REDACTED]  
Assistant Legislative Counsel

SUBJECT: Freedom of Information Act

REFERENCE: DDCI Memorandum of 14 August 1978, Same Subject

1. It is an undebatable fact that the ever increasing burden of responding to requests under the Freedom of Information Act (FOIA) has required an exceptionally difficult redirection of the efforts of CIA as well as a serious dislocation of its resources, both in a monetary and moreover a manpower sense. The problems with the FOIA are many faceted, and its overall affect on this Agency is great. It is this office's position that no effort ought to be spared in seeking remedial or exemptory legislation. The following paragraphs describe in brief some of the more serious aspects of the problem.

2. ADMIN Burden: In calendar year 1977, CIA received an average of 93 requests per week (a portion thereof being Privacy or E.O. requests). Due to the omnibus nature of many of the requests and the required review of thousands of documents, CIA has a tremendous backlog of requests and appeals. As of March 1978, 2,600 requests and 260 appeals were backlogged. At present we are expending the equivalent in man hours of [REDACTED] personnel. This figure does not, of course, include the not insignificant amount of time expended by senior DCI and DDO officials in reviewing initial release or denial decisions and appeals evolving therefrom. It is at least clear that, in the case of the DDO officers, the time expended on FOIA matters could be better spent in the collection of intelligence. Although total costs are difficult to determine, it is worthy to note that last year [REDACTED] expended in salaries directly tied to the FOIA, whereas only \$16,435 in fees were collected.

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3. Legislative Intent v. Results:

The legislative intent to open the Government's files, with certain limited exceptions, to the public is clear. The idea that the American public has a right to know what its Government is doing and benefit therefrom is a theory which, in principle, we take no issue.

In actual fact, however, the public vis-a-vis non-excepted release of CIA information is not getting the benefit of the bargain. Because of this Agency's statutory mandate to withhold protected information, only a very small portion of that information requested under the FOIA is able to be released. Thus, in most cases, a search and review of thousands of pages of documents relating to a particular request might result in the release of only a few pages of disjointed, often sanitized, information which neither truly responds to the requestors interest nor satisfies the intent of the Congress. The price to the taxpayer for this dubious result is, as indicated supra, enormous.

It should also be noted that there is a high risk factor involved in deciding what is and what is not to be released. We have already witnessed the accidental release of classified information on a number of occasions. Such occurrences will continue until such time as the type of documents containing classified information are excluded in total from the act.

To date the Agency has been successful in convincing the courts to upholding our determinations that information sought to be released under FOIA should be withheld; this may not always be the case. Therefore, the risk itself that damaging information might be determined to be released is a valid argument for a more comprehensive exemption.

4. Deliterious Effects on CIA:

Besides the already described administrative affect on CIA, the FOIA is having a serious affect on CIA's operations

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5. Scope of Coverage: In addition, it is disheartening, and probably not the intent of Congress, to note that because the Act is available to all persons regardless of nationality, that foreign governments and moreover hostile foreign intelligence services may use information gathered by operation of U.S. laws against the best interest of the United States.

6. Options: There are basically two options available that would relieve this Agency of the unwarranted burden now imposed on it by the FOIA.

A. Total Exemption: It can be argued that, due to the unique nature of the CIA mission, the type of information collected from that mission and the miniscule part of that information releasable under the Act, the CIA ought to be totally exempted from the FOIA as in both the interests of the public in general and the Government and this Agency in particular.

B. Partial Category of Information Exemption: In large measure this Agency's most significant problems with the Act would be remedied were Congress prevailed upon to amend the current FOIA so as to broaden the current CIA related exemptions to include all operationally derived/originated material.

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for public consumption both unclassified CIA finished reports and CIA reports that, because of age or otherwise, had become capable of declassification and by extension release under the FOIA. This would mean in effect that the vast majority of CIA information would not fall under the purview of the FOIA and would not therefore have to be reviewed. The reviewing of the small remaining amount of material potentially releasable would not present a problem.

7. Recommendation: It is the recommendation of the OLC that a representative(s) of the OLC/Legislation Staff and the OGC General Law Division meet, discuss the issues and equities involved in the foregoing as well as other options and their feasibility and saleability to the Congress and thereafter draft remedial legislation to be presented per the 19 August 1978 memo from the DDCI.

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